

"The Sand Beneath our Feet: The Changing Mandate in the Croatian Inquiry"

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Challenge and Change for the Military Institution, the Military Profession and Military Leadership in the 21st Century

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*Carefully study the well-being of your men, and do not overtax them.*¹

OUTLINE

On a very personal level, I now realize that the call to chair the Croatia Board of Inquiry was one of those rare duties that come along in one's career that significantly alter the rest of your uniformed career and post-military life. Consequently, I welcome the chance to share some of the perspective I developed during that time with others through the venue of the IUS. This seminar is an excellent chance for me to that.

Before launching directly into the major challenge our board faced with identifying what the real mandate was, I will provide some background on OP Harmony, the mission that created the circumstance that gave rise to the need for the board in the first place, and touch on the rather disjointed way the makeup of the board was established. This is all quite important in understanding why our mandate was so difficult to nail down early on. The focus of this board was eventually found, but even more significant in my mind is the ethical responsibility of board members to search for the right mandate and to persevere in ensuring that once found, it remains at the centre of activity. A number of lessons can be extracted from this experience that can help the Canadian Forces deal with future boards of inquiry, and ensure the right to conduct such inquiries remains resident within the organisation.

INTRODUCTION

It was extraordinarily positive to see how Canadians rallied around their military this year when four members of the Canadian Battle Group in Afghanistan were killed and a number of other soldiers seriously injured by the inadvertent bombing of their training exercise by a USAF fighter pilot. Almost immediately, a call went out for a military board of inquiry to investigate this

¹ Sun Tzu (6th–5th century BC), Chinese general. The Art of War.

terrible incident and to provide both Canadians and Americans with answers as to how this accident could have happened. In the weeks and months subsequent to this tragedy, it became clear that much of the high level of Canadian support for the military effort in Afghanistan, and indeed the overall struggle against terrorism, depended on the credibility of this board of inquiry process. What was not as evident was that the inquiry process, including its ability to actually *investigate*, was sufficiently robust as to withstand this high level of public scrutiny and expectation.

Having been the chairman of a previous board that was conducted more or less in the glare of public scrutiny, I was sensitive to the pressures to perform and produce that General Maurice Baril must have been experiencing. Indeed, General Baril had immediately upon being named as chairman, asked for some insight into how the Croatia Board of Inquiry had handled many of the same issues he was facing. As Canadians continue to look for answers to their legitimate questions about how such a terrible event could occur, the BOI process seems to be holding up. However, there are several ways that the process could be strengthened, and it is the purpose of this paper to discuss some of those – particularly, means of allowing the board members to influence the mandate once a board has been established, and secondly, the need to physically conduct a credible investigation that will get to the root of a complex and potentially controversial issue.

BACKGROUND

Although Canadians can be forgiven for not knowing, the deaths of the four members of the 3rd Battalion of the Princess Patricia's Canadian Light Infantry (PPCLI) in Afghanistan were not the first to be suffered by that proud regiment in service to their country in recent times. In the three years between August of 1992 and September of 1995, eleven members of the Canadian Forces were killed serving in the Balkans with the United Nations Protection Force called UNPROFOR. Many more of the nearly 9000 Canadians serving in the Balkans between 1991 and 1995 suffered serious injuries as a direct result of their service in this theatre.² Some of these injuries were visible at the time, but many others only became evident some time after the units returned to Canada. In any case, the Canadian Forces were unprepared to deal with either the numbers or the types of casualties that resulted from this operation. And so in the glare of the media attention, and under pressure from both the public and the government, the Croatia Board of Inquiry was called in July of 1999 to investigate the cause of these casualties and, in effect, the controversy surrounding them.³ Specifically, the board was asked to examine the suspicion that had been voiced in the media

² For an excellent overview of these deployments, see Dr Ken Reynolds, "Canadian Forces Operations in the Balkans, 1991-1995," a research paper commissioned by the board and dated 12 September 1999.

³ Formally called the Board of Inquiry – Potential Exposure of Canadian Forces Personnel To Contaminated Environment – Croatia 1993-1995. It became known as the Croatia Board or the Sharpe Inquiry.

that some sort of environmental exposure during the deployment to Croatia might be the cause of the unexplained symptoms that were being observed. Officially, the assigned mission was:

... to investigate whether Canadian Forces (CF) members serving in the Canadian Contingent United Nations Protection Force (CC UNPROFOR) and assigned to the area of operations commonly referred to as Sector South during the period 1993 to 1995, were exposed to environmental contaminants in quantities sufficient enough to pose a health hazard during the course of their duties.⁴

This paper is based on the experiences of the board as we probed the circumstances of this operation, and sought to identify the proper mandate. It will detail some of the lessons we learned during the course of our investigation and some of the problems we faced in clarifying our mandate and gathering the right information. Of necessity, it must also describe many of the circumstances surrounding the actual deployments, and so, like the board itself, it will tell part of the story of Operation Harmony, an overseas operation that too many Canadians have remained unaware of for far too many years.

On 4 April 1993 the third rotation of a Canadian Forces battalion group (BG), this one based on the 2nd Battalion of Princess Patricia's Canadian Light Infantry from Winnipeg (augmented by personnel from sixty-six regular and reserve units from across Canada), assumed responsibility for UN peacekeeping duties in the northern sector of Croatia.⁵ Although this was neither the first nor the last Canadian BG to serve in Croatia as part of UNPROFOR, it was the one that endured what was perhaps the greatest period of turmoil as this part of the Balkans slipped back into intense ethnic conflict and the United Nations grappled with how to reassert their authority in this new and very dangerous peacekeeping environment. In the words of the Commanding Officer, Colonel Jim Calvin, testifying to the board on 16 September 1999:

Stress and fatigue could have played a role in what has happened. I do believe that the severity of our tour was, if not the worst, certainly amongst the very worst in terms of those tours that happened in the early 1990s. A combination of personal danger, extreme fatigue due to lack of leave ... long hours, traumatic stress on individuals, deaths within the battalion produced an overall level of burden on individuals within the unit that was severe.

⁴ Terms of Reference – Board of Inquiry – Potential Exposure of Canadian Forces Personnel to Contaminated Environment – Croatia 1993-1995, dated August 1999. These are accessible at www.dnd.ca/boi.

⁵ During the life of UNPROFOR there were five Canadian battalion groups deployed to Croatia, beginning in March 1992 and ending in November 1994. The first deployment, referred to as ROTO 0, was based on 1 R22eR; ROTO 1 was based on 3 PPCLI; ROTO 2 (the third battalion group to serve in theatre) was based on 2 PPCLI.

This period witnessed Croatia, a small country about the size of Nova Scotia, that had emerged from the ruins of the former Yugoslavia in 1991, go from relative stability to virtual civil war. The territory the Canadians were responsible for was in a bitterly contested area called the Krajina, where Croats and Serbs confronted one another directly. Horrific atrocities, well beyond what the Canadian troops could either understand or influence, were committed by the majority Croats on the minority Serbs. Deployed into the middle of the war, the Canadians were often the targets of rifle, heavy machine gun and even artillery fire as both sides attempted to intimidate the peacekeeping forces to gain advantage. In trying to maintain a protective line between factions they were powerless to control, they themselves became the targets of Croat and Serb anger. In one instance in January of 1993, a Canadian armoured personnel carrier was lured into an ambush on the Serbian side of the line and attacked with an anti-tank rocket. While the vehicle was destroyed, the four-man patrol and the driver were not in it at the time.⁶

The resulting operations – better called ‘peacemaking’ than ‘peacekeeping’ – were to become the cause of great turmoil for this battalion group, which included large numbers of reserve soldiers and which had trained as a team only briefly in the United States. Before their six-month tour was over, the men and women of ROTO 2 would witness atrocities beyond the imagination of most Canadians and be exposed to a level of combat not experienced by Canadians since the Korean War.⁷ They would exhibit heroism well beyond expectations and it would all happen virtually unknown to the rest of Canadians. The state of near war carried on beyond ROTO 2. The Commanding Officer of the Canadian battalion group that replaced Col Calvin, Colonel (now Brigadier General) Marc Lessard, described the situation he found this way:

From my point of view ... the tour is really divided into two. From the 3rd of October to the 23rd of December, which was war – it was war. And I will use an expression, it is mine, it was retarded. It was war. It was Dodge City.⁸

At that time, if Canadians were thinking of the military at all, their attention was focused on what became known as the Somalia Affair. In this environment,

⁶ Col Calvin describes the incident in his testimony of 16 September 1999. Members of 2 PPCLI were in theatre at the time on a reconnaissance in advance of their deployment. “What that taught us right there was that we were not going into a theatre as we had known it from our past experiences in Cyprus. We were going into a theatre where Canadian soldiers could be specifically targeted. This was no accident ... They had planned an incident. They had drawn a Canadian APC [armoured personnel carrier] and group of soldiers to it and they had attacked that APC.” The preceding summary was drawn from Reynolds, op.cit.

⁷ The Commanding Officer of ROTO 3 provided statistics that indicate how intense the small arms fire was. “On 13 December was a crescendo. There were 4,310 shots. Now, that doesn't mean those are shots aimed towards us. It could be a soldier just firing in the air. But just to give you a perspective. And you have in the second one 504,000 shots that we calculated during our tour.” Col Marc Lessard, testimony to Croatia BOI, 21 September 1999, p.15.

⁸ Col Marc Lessard, testimony to Croatia BOI, 21 September 1999, p.14.

senior Department of National Defence officials were not in the mood to disclose anything about operations that was not absolutely necessary. They certainly were not prepared to discuss Canadian peacekeepers engaged in firefights. Indeed, even today despite numerous legal and other reviews, there are some within the National Defence Headquarters bureaucracy that are convinced that there are actions that occurred during this deployment for which some members of the leadership in the field should be punished.

While senior United Nations commanders recognized the Canadians for their valour, they were virtually ignored at home.⁹ As Col Calvin recalled:

*We were all very proud of what we did. But when we came home, there was no recognition of what we had achieved even though if you talked to anybody in UNPROFOR at that time, they thought we were all bloody heroes. We came back here and it was just – you are done.*¹⁰

In the end, the Board of Inquiry concluded that this lack of recognition by the department, and the general low level of public awareness of the operation, in itself contributed to the problems suffered by returning soldiers.¹¹ It was only in 2002, nearly nine years after the events, that the Department of National Defence finally recognised the members of these units for their actions.

Partly in response to this lack of apparent official recognition, the board – in addition to fulfilling and indeed expanding the assigned mandate – felt strongly that this story of great sacrifice and service should be shared with as many Canadians as possible.

ESTABLISHMENT OF THE BOARD

Op Harmony, as the Canadian involvement in the UNPROFOR mission to Croatia was known, not only posed great leadership challenges to the chain of command in the field, but the subsequent fallout in terms of casualties challenged the ability of the Canadian Forces to deal with injuries of a type that are not easily identified. Traditionally, the operational focus of the CF medical system is physical injuries resulting from combat. The type and number of injuries that were evident after the return of Op Harmony veterans did not fit the anticipated model. As far as the soldiers were concerned, the system simply did

⁹ The commander of UNPROFOR awarded both ROTO 2 and ROTO 3 the Force Commander's commendation. Col Lessard recalls: "General Cot had great confidence in Canadians, mostly because of Medak, of what 2 Patricia did. When he came to visit us, he told us he expected us to do the same." Col Marc Lessard, testimony to Croatia BOI, 21 September 1999, p.19.

¹⁰ Col Jim Calvin, testimony to Croatia BOI, 16 September 1999, p.129.

¹¹ The first of 33 recommendation made by the Croatia BOI was: "Ensure that the personnel of 2 PPCLI Battalion Group and 1 R22eR Battalion Group who served in Sector South receive the proposed Commander-in-Chief's Commendation in recognition of their exemplary service." The complete recommendations may be found at www.dnd.ca/boi.

not work. *“It is still very much a very vivid experience for us all,”* Col Calvin told the board. *“I think that you will hear that many still feel that the system failed them. I think ‘betrayed’ would be too strong a word, but certainly ‘failed’ is not.”*¹²

Soldiers that began to develop physiological or psychological problems¹³ after their return from Croatia were often either misdiagnosed or not diagnosed at all and then turned away by the medical service. Frequently they were told that since their symptoms did not fit a known diagnosis, they were not ill. Many of these soldiers were reservists without easy access to base medical resources, and in many cases, without even the benefit of having others to talk to who had shared the experiences.¹⁴ Even more troubling, if the illness was taken seriously and the symptoms were so apparent as to be diagnosed as disabling, the full-time soldiers were routinely taken off active duty and placed on a holding list away from their units until they recovered or could be released.¹⁵ They were considered medically unable to serve in a force that required every soldier to be fit and able to deploy on a moment’s notice. This policy created a great deal of anxiety and resulted in many soldiers trying to keep their problems secret, simply dealing with them within the family for as long as possible. This issue frequently came to the surface during testimony in front of the board. For example, one sergeant from ROTO 2 told us:

*I think there is quite a few more people in my battalion that feel the same way and would not dare come forward knowing that they don't have nineteen years. They got maybe fourteen years service and they got to suck up another six years. I think it is just not a – I don't know the correct wording. I don't know the wording, sir. I don't think it is just a friendly enough environment for people to come forward and say, listen, these are all the problems that are happening knowing that they could be medically released and it is just – it is not friendly.*¹⁶

¹² Col Jim Calvin, testimony to the Croatia BOI, 16 September 1999, p.128.

¹³ ‘Physiological’ is defined by the Canadian Oxford Dictionary (Toronto, 1998) as “of or concerning physiology [which is] the science that deals with the normal functioning of living organisms and their parts” (p. 1095) while ‘psychological’ is defined as “of, relating to, affecting, or arising in the mind” (p. 1166).

¹⁴ Estimates of the numbers of reserve soldiers in the front-line rifle companies varied but in some cases the reservists were in the majority. One Regular Force sergeant from ROTO 2 provided a view from platoon level: “I had ten personnel in my section, including myself, two of which were Reg Force, seven of which were reservists. Six of those seven, it was the very first time besides their general military training with the reserves that they ever encountered any sort of operation with the military. So in actual fact I had civilians in my section that worked as soldiers with minimal training. And I was only one of many section commanders with the same responsibility.” Sgt Chris Byrne, testimony to Croatia BOI, 25 November 1999, p.15.

¹⁵ This was the Military Personnel Holding List. This placement allows the individual a fixed period of time to either recover from a serious illness or prepare for release. In either case, he or she is removed from the unit so that a healthy soldier can fill the position. The Service Personnel Holding List or SPHL has since replaced the MPHL, but many of the problems continue.

¹⁶ Sgt Glen Goudie, testimony to Croatia BOI, 25 November 1999, p. 7.

This fear of exposure and subsequent release – with the concurrent loss of income and career – not only caused considerable stress within families but also added significantly to the problem itself.

Adding great frustration to an already difficult situation was the common decision by the military bureaucracy, both medical and administrative, that while the soldier was medically unfit for further service, he or she did not qualify for a medical pension because the injuries were not diagnosed as being related to military service. After release, when the soldier applied to Veterans Affairs Canada (VAC) for a disability pension, the decision most often made was that the injuries suffered could not be identified on the list of injuries that VAC covered, and furthermore, that they could not be proven to have taken place in a special duty area. The result: the individual did not qualify for a disability pension from VAC either. The final insult was that the disability insurance company – SISIP, which every member of the CF was obliged to pay for – usually declared that the individual could not be proven sufficiently disabled to qualify for a pension under that program because the company's definition of medically unfit was quite different from the one used by the military to release him.

In the end, many soldiers faced with the interminable bureaucracy of the two government departments that were responsible for helping him, and of an insurance company that he had paid for coverage, simply sank into despair. A downward spiral, both physical and psychological, developed momentum in many of them.

In the natural course of events, some of these stories began to make their way into the media. In one notable case, retired Warrant Officer Matt Stopford actually approached the Minister of National Defence personally without any success.¹⁷ About the same time as Stopford's case was gaining publicity, it was made public that a letter documenting environmental exposure in Croatia had been removed from many soldiers' medical files. Lt (Navy) Eric Smith, a medical officer who had served on a later rotation, had drafted this letter for insertion on each soldier's medical file. His purpose was to detail potential environmental exposure during Op Harmony should the issue arise at a later date. The media and many of the soldiers quickly made a connection between the problems that Stopford was suffering and the removal of the warning that Lt Smith had appended to the files of the Croatia veterans.

The resulting publicity, especially surrounding Stopford's case, helped create the somewhat confused circumstance that led to the formation of the Croatia Board of Inquiry in the summer of 1999 – six years after the operations in Croatia that began the chain of events. Internally, the Department of National Defence had already initiated an inquiry to determine the degree of environmental contamination in Croatia; public interest, however, certainly hastened the

¹⁷ An account of Stopford's experience is in his testimony to the board of 28 October 1999.

process. At the same time, several other inquiries were initiated to deal with the handling of medical files and other related issues.¹⁸

It was in this milieu of distrust and suspicion that the Croatia Board of Inquiry began. Unfortunately, the climate deteriorated even further within the first week. The original officer nominated to lead the inquiry, Colonel Howie Marsh, was effectively forced to resign because of a perception that he was in a potential conflict of interest. He had been serving as the Command Inspector of the army when the inquiry was called, and some of the relevant information had initially come forward to that office, albeit before he was appointed. It was felt that this could affect his judgement, since the board might logically investigate the handling of this information by that office. In the interests of quickly resolving the concern, Col Marsh resigned and another president was selected – this time from the air force to reduce the possibility of conflict of interest. At the same time, several advisors to the board were replaced to ensure that any perception of conflict would be eliminated from that area as well.

However, the atmosphere of distrust did not go away. Indeed, the testimony of the retired warrant officer reveals the prevailing attitude and is worth citing at length:

I stand before you today as one of many sick soldiers that now reside across Canada pleading for a chance to testify and hopefully be looked after by the government that they have always shown tremendous loyalty to. These ill soldiers have waited patiently while the Department of National Defence continues to drag its feet on health issues and pension issues, the issues that are paramount in ensuring that injured veterans can maintain not only their families but their standard of living. Instead, they are struggling to save their relationships and homes because they are no longer healthy enough to work or carry on with normal daily activities. This is due to lost income and inaccuracies in the Department of Veterans Affairs in providing what little help the government will allow ... Col Calvin said in his testimony that "Betrayal is too harsh a word for what has happened in the last few years." I assure you, gentlemen, if you are one of the affected, 'betrayal' is too gentle of a word that describes not only the conduct of the government but also that of the Department of National Defence, its senior leaders and the Department of Veterans Affairs ... One does not have to pause long to see why we feel that you gentlemen in uniform are not the injured's first choice to run this inquiry. We would have loved to see the military Ombudsman run the inquiry right from the start.¹⁹

¹⁸ The CDS appointed retired RCMP Deputy Commissioner Lowell Thomas to investigate the missing letters and recommend improvements in the handling of medical files (the Thomas Commission) while the National Investigation Service launched its own criminal investigation of the alleged file tampering.

¹⁹ WO (retired) Matt Stopford, testimony to Croatia BOI, 28 October 1999.

In the course of its duties, the Board of Inquiry met many members of the Canadian Forces and the Royal Canadian Mounted Police who had served in Croatia. Approximately 2000 soldiers met with and had an opportunity to talk to board members outside of the testimony room. In many cases, we also met members of their families. Without exception, and despite our narrow mandate, we recognized that there was a much larger issue here than simply a problem with environmental contamination. As a group, we felt a pressing obligation to take the predicament of the soldiers beyond the simple mandate originally assigned to the BOI. The board's Convening Authority, Assistant Deputy Minister, Human Resources (Military), Lieutenant General Mike Caines, when informed of the intention to expand the mandate, was supportive and shared our ultimate goal to get to the bottom of the problem.

Eventually, we redefined and expanded the original mandate to allow us to deal with the much broader issue of how the Canadian Forces and Canada care for military personnel who are injured in the course of their duties. Most of the board's findings and recommendations fall into this area. It is on the implementation of these recommendations that I continue to believe that the leadership of the Canadian Forces must concentrate if the soldiers are to get the quality of support they deserve.

This is the context within which the reader is encouraged to consider the challenges, solutions and lessons described below. The experiences from this inquiry can provide valuable lessons for many of the current leaders and those who aspire to be leaders in the Canadian Forces, and indeed, in other organizations that deal with people. Canadians from all walks of life shared our revulsion at how we as a nation were treating those who served under our flag. The concern of ordinary Canadians for the welfare of their fellow citizens in uniform was clearly brought home following the tragedy in Afghanistan, but it is a fact that all members of the CF need to be reminded of from time to time.

More mundanely, there are lessons here that should help shape the way the Canadian Forces design and run Boards of Inquiry. The BOI is an important tool for the CF but if it is to remain a useful one, its integrity must be closely guarded and its ability to conduct credible investigations enhanced. To be a trustworthy process, the men and women that it is designed to serve must have faith that a board searches for reasons, not excuses; and for solutions, not justifications. To develop credibility and to withstand public and media scrutiny, boards must use accepted, professional investigative techniques. It is only by ensuring that the process remains above reproach that the members of the CF and the Canadian public will continue to accept the BOI procedure, and it is only in seeking to achieve maximum openness and transparency that confidence can be maintained.

FOCUS OF THE BOARD

*... soldiers must be treated in the first instance with humanity, but kept under control by means of iron discipline.*²⁰

The first and perhaps most significant challenge for the Croatia BOI was the original mandate itself. The terms were narrow and focused on the matter of immediate and greatest concern to the CF – namely the probability that environmental contamination in Croatia was at least partly responsible for the medical problems that many of the soldiers were reporting. Much had been made of the “red dirt” that many soldiers had been exposed to in theatre, and so the original direction to the BOI was to resolve whether or not this could have caused the problem.

The majority of soldiers who were suffering were hoping to find a concrete physical cause for their unexplained problems; thus the suspicion that something in the environment was responsible. The military was at least partly to blame for the persistence of this belief. As we discovered later through testimony, the CF had failed to respond in a timely manner during the operation to questions that had been asked by soldiers when they had seen things that seemed to be abnormal. For example, on one occasion there was very real concern at the working level that a pile of dirt that some platoons were using to fill sandbags could be radioactive. Rumour had it that it was some sort of residue containing uranium waste. The battalion group had no instrument for testing the soil, and expertise from Canada was not forthcoming. In the rocky terrain that is most of southern Croatia, loose soil is rare, and these troops were being shelled. All the loose soil they could find was being used to fill sandbags. The very real short-term danger from fire directed at the Canadians was far greater than the long-term potential of exposure to radiation, but the concern registered nonetheless.

Fortunately for the soldiers, one of the Padres, Captain Bob Sparks, heard about their concerns and asked the Commanding Officer if he could attempt to allay their unease through some testing on his own. As luck would have it, Capt Sparks had studied chemical engineering at the University of British Columbia, and he was still in touch with his professor there. He quickly contacted the chemist and they discussed a field test that could be performed to determine if the soil was indeed radioactive. The solution was to bury a roll of unexposed photographic film in the suspect soil while keeping another roll from the same batch as a control. After twenty-four hours Capt Sparks dug it up and discovered that it had not been exposed and was able to conclude that there was not a harmful level of radioactivity in the soil. This simple test put to rest the immediate worries of the soldiers and allowed them to focus on more pressing issues – like avoiding the incoming shellfire.

²⁰ Sun Tzu (6th–5th century BC), Chinese general. The Art of War.

Regrettably, the rumours about the potential dangers of the “red dirt” that was used to fill sandbags in Sector South were not allayed as quickly or as efficiently. It was not until the results of testing directed by the Deputy Chief of the Defence Staff were released in 1999 (some five years later) that the soil was declared uncontaminated. Because this soil (actually bauxite tailings from an aluminium smelter) had been so widely used by so many soldiers, it was the cause of much concern. After a day of filling sandbags, many soldiers would be totally covered with it, breathing the dust and ingesting it with their food. Many more soldiers spent many long nights in the bunkers built with these sandbags, and the bauxite tailings became a constant part of their environment. When unexplained physical symptoms began appearing shortly after their return to Canada, it was natural to imagine they could be related to this all-pervasive soil. Had the CF responded immediately – during the deployment – when the initial concerns were raised, there is no doubt that many soldiers would have been spared unnecessary and unproductive worry about the possible long-term effects of environmental exposure.

Much of the media attention had been triggered by the frequent references to the soil, and many of the soldiers themselves came to believe that something in the environment must have been responsible for their medical problems. Even among those who were not having problems, many became worried about what might happen in the future as a result of their exposure.

As a response to this anxiety, the original direction to the inquiry was understandable. Yet even early in our work and well before we received the technical reports on the soil from Croatia, it was evident there was a much broader issue at hand. There were a number of soldiers who were clearly exhibiting serious physical symptoms that the medical community could not explain. It was equally clear that there was much similarity in the symptoms that were being reported. Soldiers approached us and told us about digestive problems, joint pain, wild mood swings (including anger management difficulty) and great trouble sleeping. Nightmares were common. It all became so familiar that we could anticipate what soldiers were going to tell us well before they began to describe their symptoms. Equally common were complaints that the CF and Veterans Affairs were mishandling their cases, creating extreme hardship for many of the soldiers and their families, and exacerbating the underlying problem.

We felt that if our investigations led us to conclude that some aspect of environmental contamination had likely caused these symptoms, then we could look forward to at least a resolution of cause. Indeed, much of our early planning for the investigative stage focussed on the collection of such information: we wanted to correlate who was suffering from what type of symptom with where they had served, and when, so that we could eventually pinpoint the culprit. However, even if we were able to identify a probable environmental cause, we recognised that the system, in its bureaucratic myopia that seemed to be the norm, would still demand incontestable proof before moving to take care of the soldiers.

The way the system was structured, the burden of proof – the need to clearly demonstrate that the illness was a result of military service – was on the individual. Unless the medical authorities of the Department of National Defence clearly indicated to Veterans Affairs Canada that the individual's problems were diagnosed as being a result of service, the system's responsibilities effectively ended with the release of the individual. Even in cases where the DND medical authorities had concluded that service had caused the problem, the medical judgement at VAC could and indeed often did, differ, and medical and pension benefits could still be denied.

Had there been only one or two cases where it seemed that injustice had been done, they could have been explained as simple errors or exceptions. However, even without much investigation, we were inundated with examples of soldiers being released from the CF as medically unfit but being refused medical pensions by the military insurance plan and disability pensions and medical care by Veterans Affairs. Regardless of the cause, it was obvious that the way the system was treating these people was simply intolerable.

It was at this stage we realised that the board's mandate was not only too narrow, but that it had entirely missed the fundamental issue – that being how the Department of National Defence, and the country, took care of members of the Canadian Forces who had been injured serving their country.

We knew that if we stuck to the narrow terms of our mandate, and if the investigation did not turn up a specific environmental factor that was clearly responsible for the illness, we would be left with a report that simply said the environment did not make Canadian soldiers sick. While we were aware that there were some segments of the department that would not be displeased with such an outcome, we realized that this answer would not be acceptable to soldiers or to Canadians. Clearly, simply responding to the original mandate would not deal with other possible causes, nor would it touch the more fundamental issue of how soldiers were being treated by the systems that were supposed to be taking care of them.

Much of the early legal and medical advice was constraining to the board and encouraged us to simply answer the question that had been put to us. Indeed, we were advised that we would need to establish a legal level of evidence that environmental factors had caused the illness before we could draw that conclusion. From the uniformed medical community, the predominant advice was to be careful to avoid creating even more illness by suggesting possible causes without hard evidence. We debated this issue at length, recognizing that an expansion of the mandate would greatly increase the time it would take to get the work done, as well as complicate the work itself. The overall feeling was that the responsibility to try and correct the way people were being treated far outweighed the legal and medical risks associated with expanding the mandate, and that was the direction we choose to pursue.

ETHICAL RESPONSIBILITY

Military personnel in general understand their obligation to their personnel. Indeed, an important leadership principle is that the welfare of your personnel is second only to the success of the mission. However, it is easy to lose sight of that truism in the machinations of National Defence Headquarters (NDHQ) and often the potential legal and medical risks assume greater significance to the bureaucracy than the welfare of the troops.

As a note of caution and to serve as a warning to others who may find themselves in a similar predicament, our decision to extend the mandate was not universally accepted and understood within the department. While most uniformed members instinctively understand the need to defend the welfare of the troops, it is not intrinsic to the civilian side of the organization, where issues such as public reaction may be deemed more important. Similarly, an automatic understanding of this fundamental principle of military leadership cannot be assumed to exist within other organizations – some of which have been given the right to comment on actions taken by military leaders. As an example, the Chairperson of the Military Police Complaints Commission took great exception when the Special Review Group, formed by the CDS to examine issues of leadership during the Croatia deployment, went beyond its mandate to examine matters that directly affected the general well being of soldiers. In her opinion, unless specifically directed, military officers had no right – let alone obligation – to act on issues affecting the welfare of their subordinates.²¹

From our perspective, the responsibility to identify what must be done to put right the things we observed to be wrong became central to our purpose. In the Canadian Forces, this is a serious responsibility that must be continually exercised and the right to exercise it must be continually reinforced; it is a responsibility that must be met if the institution is to deserve the trust of the men and women who serve in uniform. As our work progressed and we heard from more and more of the soldiers, it became our primary *raison d'être*.

The original mandate of the board was certainly broad enough to allow a thorough look at the environmental issue. It would permit us to conduct a sound scientific analysis to either dismiss contamination or identify it as a definitive cause of the problems soldiers were suffering. Finally, it tasked us to produce a set of recommendations to improve the CF's handling of environmental issues. At that point, we could go home. The problem, of course, was that there were sick soldiers out there who had obviously suffered serious injury as a result of their service; to tell them what it wasn't would do little to help. As we considered the board's work plan, it became clear that the central question for us was bigger

²¹ Military Police Complaints Commission report titled "Following a Public Interest Investigation Pursuant to Subsection 250.38(1) of the *National Defence Act* With Respect to the Complaints of BGen Patricia Samson CFPM and Ex-Warrant Officer Matthew Stopford" dated 17 January 2001. The complete report can be accessed at [www.dnd.ca/menu/press/Reports/CDS/FINAL\(Eng\)Public.pdf](http://www.dnd.ca/menu/press/Reports/CDS/FINAL(Eng)Public.pdf).

than what specifically had caused the illness. This was obviously important, but how the CF and the country dealt with soldiers when they returned from deployments where they may have suffered injury was far more significant. Indeed, without dealing with that official behaviour, determining what had originally caused the illness would do little to solve the long-term problems of the veterans of this deployment. In short, we had to focus on the patient, not just the illness. Once we had a consensus on this, we returned to the terms of reference and read them with a new eye.

If we considered the deliverables that were identified in the tasking letter as merely a minimum, a starting point, then we could find a way to go much further where we needed to. Included in the terms of reference was one sentence that read: *“In addition, the BOI may make findings and recommendations on any other relevant matter arising from its inquiry.”*²² The board quickly defined the manner in which people were treated as a relevant matter and we proceeded to design our work and communications plan to focus on that aspect of the investigation. As it turned out, the unnecessary stress that many sick soldiers felt when they tried to get support from the system was a large contributor to their misery.

One valid concern with this approach was how to retain some control over where the inquiry went after the decision was made to expand. There were clearly many areas of life in the Canadian Forces and many operational decisions made that had a significant impact on the welfare of soldiers, which we had neither the time nor the expertise to investigate.

For example, on the international side, the United Nations command clearly affected how Canadian troops were employed in theatre. Were the full consequences of moving forces from Sector North to Sector South considered before the orders were issued? Were Canadian commanders in the chain able to ensure they had full Canadian political awareness and permission to expand the mandate of the Canadian contingent once deployed? The thread of accountability that extends from the battalion group commander back to senior Canadian military and political decision makers was not clear, and this certainly had an impact on the welfare of Canadian soldiers. Domestically, interaction among government departments clearly created problems for returning veterans. How far down the road toward understanding the disconnects and identifying potential remedies could we go without losing sight of our aim and diluting the end product to the point of uselessness?

Time also mattered: the tasking letter directed that we complete our work “as soon as possible.” Col Marsh’s estimate had the board completing its deliberations well before Christmas 1999. Given the number of soldiers who were waiting for the findings, this was not an unrealistic goal.

²² Terms of Reference – Croatia BOI Amendment #2, dated 16 August 1999, p. 3/5, para 7.

As the mandate expanded, however, the time line would have to stretch further into the future. Achieving a balance between going so far as to lose our focus and ensuring we went far enough to satisfy the soldiers who had been waiting so long was an ongoing challenge. As president of the board, I revisited this balance frequently during the course of our work. Individual members felt free to suggest areas of expansion, but the team as a whole tended to agree on the lines we drew. Even when the work was wrapped up and the recommendations submitted many of us felt there was still much to be done to improve the system. The 'care of our people' focus was wholeheartedly and immediately endorsed by all of the members. It was reflected in our communications with the field and with the public through the media. On our first visit to talk to soldiers who had served in Croatia, it was evident that this theme resonated with the people who mattered the most. It was also clearly a theme that the media and the public could easily identify with and understand.

Expanding the mandate beyond environmental issues and making the welfare of Canadian soldiers the focus of the work was the single most important decision we made. It allowed the investigation to get into areas that had a tremendous impact on the well-being of soldiers and it allowed us to identify and recommend remedies for major disconnects in the way the system handled veterans. At the same time, self-discipline was necessary to limit our investigation to pertinent areas. While this decision was made by the board as an independent team, it was certainly not a point of dispute with the convening authority. The support staff assigned by LGen Caines was well aware of the direction we were taking. Indeed, it was noted in the first formal progress report made by the president (in late October, 1999) and briefed by invitation of LGen Caines to the senior decision makers in the department at a Daily Executive Meeting.²³ By that time the board had already adopted this approach and the positive way in which the public was receiving it was recognized.

Within the department, however, there was considerable discomfort with the board dealing directly with the media without prior approval from the public affairs organization on an issue that could be considered critical of the department. The public affairs director general was particularly concerned that the language and approach we were taking in public could cast the department in a bad light, especially if the media were to take certain phrases out of context. For example, we frequently referred to the manner in which soldiers had been treated as a disgrace, which indeed it was. The concern was that this could be interpreted as us calling the department disgraceful – which we were not. However, we found

²³ From the Interim Report dated 29 October 1999: "The Croatia Board of Inquiry was called to investigate whether Canadian soldiers who served as peacekeepers in Croatia over a span of three years were exposed to environmental toxins. Our terms of reference did not, however, limit us to this singular issue. Given the flexibility to report on other relevant matters, the Board examined a broad range of subjects that influence the health and welfare of Canadian soldiers. As a result, many of our findings and recommendations address matters relating to the support and care provided to Canadian Forces members."

the media to be very supportive of keeping the message accurate and trusted that they would continue to do so.

The active opposition of some members of the defence bureaucracy made the method of informing senior leaders of the department of this expansion of the mandate very important. It was briefed to the senior leadership as a careful and intentional decision made by the board as a whole, and one that we felt was within our terms of reference, albeit broadly interpreted. Positive direction from the convening authority would have been required to stop us at that stage, and it was already clear from the reaction of the soldiers and the public that we were doing what they expected us to do. The Chief of Defence Staff overtly stated his support for our approach at that Daily Executive Meeting, and we encountered little open opposition after that.

Last, but certainly not least, LGen Caines shared the board's desire to resolve the issue and to settle as many problems with the treatment of our soldiers as we possibly could. His constant and visible support, even when the board's approach was being strongly challenged by senior levels of the department, never wavered.

LESSONS LEARNED

During future BOIs of this complexity, it would be beneficial to allow the members to influence the mandate after enough investigation had been done to allow a thorough understanding of the issues. Often, the challenge of isolating the right single issue is insurmountable at the outset. Yet finding the right target to pursue is essential, and this may require a modification of the mandate. While legal, medical and communications advice must be considered; the final decision must rest with the actual board members. The bureaucratic nature of a military organization gives it a tendency to make documents, such as terms of reference, overly restrictive. Accordingly, many opportunities have no doubt been missed to solve much broader issues. The final decision for expansion or alteration of the mandate should rest with the board's president. There is definite risk involved, but if the department chooses the leader of the board wisely, this risk is minimal. Given that he or she is normally chosen with care, and that qualified members and necessary advisors are routinely appointed, this should not be a difficult principle to observe.

In summary, selecting the right issue to pursue was the most critical decision taken by this Board of Inquiry. The easy route would have been to adhere strictly to the assigned terms of reference. That would have been technically and legally acceptable; it would, however, have been morally and professionally wrong. When confronted with a choice, we as leaders in the military have an obligation to do the right thing regardless of inconvenience or other consequences. In this case, the welfare of a large number of troops was obviously in jeopardy, and our course of action was clear.

The mandate of a BOI is extremely important, defining as it does both the time allowed and the matters to investigate. However, it is not uncommon that the initial focus of an inquiry turns out to be on the wrong aspect of the problem. In these cases, if the mandate is not broad enough to allow the pursuit of the right agenda, it is essential that the convening authority be prepared to support the broadening of the mandate, and that the president and members be prepared to follow the critical thread all the way to its source. Board members, supported by the convening authority, need to be cognisant of the differing interpretations of the military ethic.

As a matter of principle, military members of a board need to be free to pursue issues that touch their responsibilities as leaders, as well as those responsibilities specifically assigned by the convening authority. Should these pursuits result in conflict with legal or other departmental authorities, the convening authority must be prepared to support the board.

The importance of identifying the real issues to be investigated cannot be overstated. Like reconnaissance, time spent at the beginning ensuring that board members grasp the true nature of the matter under consideration is seldom wasted. It is far more difficult to change direction without appearing to lose focus once the work is launched. In order to retain their credibility, all members of a board need to go to great lengths to avoid providing the wrong answers to questions from the media or the military. When answers are not known, this must be clearly stated. Questions cannot be avoided and must be answered as accurately as possible. The use of outside expertise is a strong positive move when the complexity of a situation demands it. The management of information can rapidly become the major concern.

Accordingly, an approach to information management must be selected early and then followed. The convening authority must be prepared to provide the necessary equipment and personnel immediately. Board members should never assume the existence of information within the system until they have seen it, and they should never assume co-operation from all points in the bureaucracy until they have experienced it. Some matters that directly affect a board's work may involve parts of the departmental bureaucracy that do not entirely support the board's methods or goals.

INVESTIGATIVE CONCERNS

"All investigations are imperfect. Some are grossly imperfect. Some are incompetent or negligent; others are conducted for an improper or malicious purpose. One thing is certain. There will be flaws in the very best investigation."²⁴

²⁴ *The Champion*, July 2002, Death or Injury Cases Involving Law Enforcement Officers, page 13 an article by Gareth Jones and Barry Nolan (Publication of the National Association of Criminal Defence Lawyers NACDL)

Once the mandate of a board has been established, a professional, credible and productive approach to conducting the investigation is very important. While the conduct of an investigation may appear to be a relatively straightforward task, the reality can be anything but. In many cases, a serious investigative effort is required just to identify and isolate the real issue, even before the mandate can be formulated. Conducting an investigation in a manner that will withstand both public and legal scrutiny is not a skill that is normally well developed in military officers. While legal advice is readily available – and invaluable – it is not enough to allow a board to be confident that the investigative plan is good enough. To ensure solid, investigative techniques are employed, the same level of investigative advice as legal advice should be available.

In the case of the Croatia Board of Inquiry the investigative plan matured as we refined our mandate. We also had a tremendous advantage in having an experienced member of the Royal Canadian Mounted Police as a full member of the board. Additionally, this officer had extensive peacekeeping experience and knowledge of the military. In the interests of future boards, this is not an area that can be left up to the luck of the draw to determine.

While we were fortunate in the case of the Croatia Board, the initial reaction to the investigation into the accidental bombing in Afghanistan illustrates that this will not always be the case. For General Baril and his team in the Afghanistan board, the public was vulnerable to being easily swayed by suggestions that the actual investigation was not professional enough and avoided areas that might offend the United States. While the eventual outcome clearly demonstrated that this was not the case, there was certainly a period of time where the public perception of the board's work was in doubt. In this case, a clear, professional approach to the investigation that reflected accepted techniques (such as those used by police organisations) would have allayed much of this fear.

There are undoubtedly flaws in every investigation as postulated in the article quoted above. The critical aspect for military boards is to establish an investigative approach that will eliminate flaws that can challenge the credibility of the outcome.

CONCLUSION

As an air force officer with no experience and little understanding of peacekeeping operations, the opportunity to chair the Croatia Board of Inquiry was certainly not one that I would have sought. However, in retrospect, I now consider it one of the most significant duties that I was asked to perform in my 36 years of service.

As I watch the positive changes that are taking place within the Canadian Forces in the way we take care of our soldiers, I recognise the extreme importance of Boards of Inquiry to the long term health of the organisation, and

the absolute necessity of ensuring that boards remain credible, competent and trusted – both within and without the military.

By far the most important step in the unfolding of an effective board is clearly understanding the issue that needs to be investigated. Once that is apparent, the members of a board must have the ethical and professional fortitude to pursue that issue until they have found the answers.

The focus of our board was eventually found, but even more significant is that as individuals and as a group, we met our ethical responsibility to the Canadian public and to the members of the Canadian Forces – who expect and deserve no less.